167-113

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 167.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

MONROE SALISBURY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED MAY 16, 1891.

(14644.)

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1 *Complaint.*

In the United States circuit court, ninth circuit, district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
MONROE SALISBURY, DEFENDANT.

The United States of America, the plaintiff above named, by its attorney, S. G. Hilborn, esq., complains against Monroe Salisbury, the defendant herein, and for cause of complaint shows the court :

I.

That on the 15th day of March, 1878, one Thomas A. McDevitt, as principal, and James Kee and William H. Cranford, as sureties, entered into a written contract with the plaintiff, acting in that behalf through and by D. M. Key, Postmaster-General, in which said contract the said Thomas A. McDevitt agreed and undertook, for and in consideration of the sum of $6,425.00 per year, to carry the United States mail upon
2 the route then known as No. 36115, being the route between Helena, in the Territory of Montana, by way of Hot Springs, Black Foot City, Toll Gate, Deer Lodge, Yamhill, Pioneer, New Chicago, and Bears Mouth and Missoula and back, six times a week, for and during the term of four years, beginning on the first day of July, 1878, and ending on the 30th day of June, 1882.

That the contract hereinbefore mentioned was subject to and contained written thereon, among other things, certain conditions, stipulations, and agreements, all of which are contained in a copy of said contract hereto annexed, marked Exhibit A, and made a part hereof.

That the said contract, after being duly executed by the said Thomas A. McDevitt and by the sureties above named, and duly accepted and approved by the plaintiff, through and by said D. M. Key, Postmaster-General as aforesaid, was and now is on file in the Post-Office Department of the United States.

That on the 1st day of October, 1878, by an instrument in writ-
3 ing, duly executed, the said Thomas A. McDevitt did sublet and subcontract the carrying of the said mail on the said route No. 36115 to the defendant, Monroe Salisbury ; and the said subcontract was thereafter duly filed in the Post-Office Department of the United States, a copy of the same being hereto annexed, marked Exhibit B, and made a part hereof.

That in pursuance of the contract hereinbefore mentioned between the plaintiff and the said Thomas A. McDevitt, he, the said McDevitt, on the 1st day of July, 1878, entered upon the performance of the service therein contracted for, in a manner acceptable to this plaintiff, and continued to perform said service until the 1st day of October, 1878, at which date the subcontract hereinbefore referred to and hereto annexed, was executed and duly entered into by and between the said McDevitt and the said defendant, Monroe Salisbury. That thereafter the said mail service was per-

formed by the said defendant, Salisbury, under and by virtue of the said subcontract during the remainder of the said contract term, that is to say, until the 30th day of June, 1882.

4 That from and after the 1st day of July, 1879, the said subcontract was duly recognized by the Postmaster-General, and from and after said date such sums as were and became due and payable under and by virtue of the original contract between the plaintiff and Thomas A. McDevitt, as afterwards amended and changed in the manner hereinafter set forth, were paid to the said defendant, Salisbury, for the services rendered under the said original contract as so amended, altered, and changed.

II.

That for the purpose of facilitating and expediting the service of carrying the United States mail between Helena and Missoula, and the intermediate places set forth and mentioned in said contract, the said Postmaster-General, by a certain order issued on the 24th day of December, 1878, did agree and consent with the said Thomas A. McDevitt to expedite the said mail service by shortening the schedule of departures and arrivals

5 on the said route from and after the 1st day of January, 1879, and to increase the service upon said route.

That in pursuance of the order so issued by said Postmaster-General as aforesaid, the running time upon said route was reduced from 36 hours in summer and 59 hours in winter to 30 hours in summer and 45 hours in winter, and that an additional sum was allowed for such expedition, or increase of speed, of $9,637.50 per annum, said allowance being made in supposed accordance with the provisions of law as contained in section 3961 of the Revised Statutes of the United States.

That by a further provision in the said order the service upon said route was increased from and after January 1, 1879, one trip per week, and an additional allowance was made therefor of $2,671.08 per annum, said allowance being computed pro rata upon the basis of the compensation provided for in the original contract hereinbefore referred to, as increased by the additional allowance for expedition or increase of speed last above-mentioned.

6 III.

That the said Thomas A. McDevitt consented to the terms and conditions set forth and mentioned in the said order relative to the expediting and increasing of the said service upon the line of said route; and by reason of said agreement and consent to the terms and conditions set forth and mentioned in said order, upon the part of the said Thomas A. McDevitt, the original contract executed by the said McDevitt upon the 15th day of March, 1879, was and became amended, altered, and changed; and the said contract so amended, altered, and changed was accepted by the said McDevitt.

IV.

That after the execution of the subcontract hereinbefore mentioned by and between the said McDevitt and the defendant, Monroe Salisbury, whereby it was agreed by and between said parties that the entire amount

paid which might thereafter become due to said McDevitt should be given, assigned, and set over to the said defendant, Salisbury, the said
7 McDevitt, in his own name, but at the instigation and request, and in the interest and on behalf of the said defendant, Salisbury, did, by means of certain false and fraudulent representations set forth in a certain sworn statement dated December 18, 1878, and presented to the Postmaster-General, relative to the expediting and facilitating of the service of carrying the mail on the route aforesaid, procure said order made by the said Postmaster-General on the 24th day of December, 1878, thereby amending, altering, and changing the original contract.

That the said Thomas A. McDevitt, at the instigation and request and in the interest and on behalf of the said defendant, Monroe Salisbury, falsely and fraudulently stated and represented in said sworn statement so made by him and presented to the Post-Office Department as aforesaid, that for the purpose of performing said service of carrying the mail over said route No. 36115 six times a week on a schedule of 36 hours
8 in summer and 59 hours in winter, there were required 6 men and 24 horses, and that to perform said service upon a schedule of 30 hours in summer and 45 hours in winter would require 15 men and 60 horses.

That the additional allowances for expedition or increase of speed contained in said order made the 24th day of December, 1878, were made solely upon the basis of said statement, signed and sworn to on the 18th day of December, 1878, by the said Thomas A. McDevitt, which said statement was presented by the said McDevitt to the Postmaster-General, he, the said McDevitt, acting therein at the instigation and request and in the interest and on behalf of said defendant, Salisbury. A copy of said statement is hereto annexed, marked Exhibit C, and made a part of this complaint.

V.

That the said representations, so made in said sworn statement by the said Thomas A. McDevitt, to the Post-Office Department, were wholly false and fraudulent, in this:

9 That it was therein alleged that for performing the service of carrying the mail on the said route No. 36115 upon the then existing schedule of 36 hours in summer and 59 hours in winter it required 6 men and 24 horses; and that upon the proposed expedited schedule of 30 hours in summer and 45 hours in winter it would require 15 men and 60 horses, thereby making it to appear that by reason of the expediting of the schedule there would be an increase of the number of men and horses required to perform said mail service of 9 men and 36 horses; which said representations were false, as the said McDevitt and the defendant, Salisbury, then and there well knew, and were designed to mislead and did mislead the Postmaster-General.

Whereas in truth and in fact neither the said Thomas A. McDevitt nor the defendant, Monroe Salisbury, acting for or under him, ever required or used in performing the service of carrying the mail on said route upon the expedited schedule any greater number of men or horses than
10 the said McDevitt alleged in his said sworn statement were required for performing said service upon the original schedule of 36 hours

in summer and 59 hours in winter, or than were actually used in performing said service upon said original schedule.

That, by means of the said statements and representations so falsely and fraudulently made by the said Thomas A. McDevitt, and by means of false and fraudulent vouchers, presented to the Post-Office Department, the defendant, Monroe Salisbury, was paid by and received from this plaintiff a larger sum of money than he was lawfully entitled to receive for the performance of said mail service under said contract as amended, altered, and changed as aforesaid.

That the sum so received by the said defendant from this plaintiff by means of said statements and representations, so falsely and fraudulently made, upon false and fraudulent vouchers presented to the Post-Office Department, as aforesaid, for services performed between the 1st
11 day of July, 1879 (from which date the subcontract of the defendant hereinbefore mentioned was first recognized by the Post-Office Department), and the 1st day of July, 1882, was $30,690.16; and the said sum so received was in excess of the amount which the said defendant was legally entitled to receive for the mail service performed during the said period.

VI.

That by reason of the premises hereinbefore mentioned, the plaintiff has sustained damages amounting to $30,690.16, being the sum of money so paid to said defendant, Monroe Salisbury, by means of the false and fraudulent representations in the said sworn statement of McDevitt and of the said false and fraudulent vouchers made and presented to the Post-Office Department as aforesaid, and in excess of the services actually performed by said defendant during the period last above mentioned.

That the said sum of $30,690.16 has demanded by the plaintiff from the said defendant, but he, the said defendant, has utterly failed,
12 neglected, and refused, and still does fail, neglect, and refuse, to pay the same or any part thereof.

Wherefore plaintiff demands judgment against defendant for the said sum of $30,690.16, with interest thereon from the 31st day of July, 1882, at the rate of six per centum per annum, together with the costs of this suit.

2ND COUNT.

And for a further cause of action said plaintiff alleges that the said defendant, Monroe Salisbury, on the 31st day of July, 1882, was indebted to the said plaintiff in the sum of thirty thousand six hundred and ninety dollars and sixteen cents for so much money by the said defendant, before that time had and received to and for the use of the said plaintiff, which said sum of money the said plaintiff avers was then due and payable, yet the said defendant, although often requested so to do, has not paid said sum of money nor any part thereof.

Wherefore plaintiff demands judgment against defendant for the
13 said sum of thirty thousand six hundred and ninety dollars and sixteen cents, with interest thereon from the 31st day of July, 1882, at the rate of six per centum per annum, with the costs of this suit.

3RD COUNT.

And for a further cause of action the said plaintiff alleges that from and after the first day of July, 1878, up to and including the 30th day of June, 1882, one Thomas A. McDevitt was the contractor, an' from and after the first day of October, 1878, the defendant, Monroe Salisbury, was the subcontractor under the said McDevitt for carrying the United States mail upon the mail route then known and designated as route No. 36115 from Helena to Missoula, in the Territory of Montana. That on the 24th day of December, 1878, and order was made by the Postmaster-General to take effect on the first day of January, 1879, expediting the schedule and decreasing the running time for carrying the mail on said route from 36 hours in summer and 59 hours in winter to 30 hours in summer
14 and 45 hours in winter, and allowing an additional sum therefor of $9,637.50 per annum in supposed accordance with the provisions of law as contained in section 3961 of the Revised Statutes of the United States.

That said order for additional allowance was made solely upon the basis of a certain statement prepared and sworn to on the 18th day of December, 1878, by the said Thomas A. McDevitt, and subsequently presented to the Postmaster-General by said McDevitt at the instigation and request and in the interest and on behalf of the said defendant, Monroe Salisbury. A copy of said statement is hereto annexed, marked Exhibit C, and made a part thereof.

That by a second clause in the order of the Postmaster-General, above mentioned, the service upon said route was increased from and after the first day of January, 1879, one trip per week, and an additional allowance was made therefor of $2,671.08 per annum, said allowance being computed pro rata upon the basis of compensation provided for in
15 the contract between the plaintiff and the said Thomas A. McDevitt as increased by the allowance for expedition last before mentioned. That the said additional allowances, made as aforesaid, were, from and after the first day of July, 1879, paid to the defendant, Monroe Salisbury, by the plaintiff's officers.

The plaintiff further says that the allegations in the said sworn statement presented to the Postmaster-General, as aforesaid, upon the basis of which the said additional allowances for expedition were ordered and payments made as aforesaid, were false and untrue, as the defendant then and there well knew, in this: That it was therein alleged that the number of men and horses required to perform the mail service on the said route six times a week upon the original schedule of 36 hours in summer and 59 hours in winter, was 6 men and 24 horses, and that upon the proposed expedited schedule of 30 hours in summer and 45 hours in winter it would require 15 men and 60 horses, thereby making it to appear that an increase would be required in the number of men and horses
16 necessary to perform the mail service upon said route by reason of the change of schedule of 9 men and 36 horses. Whereas, in truth and in fact, there was no increase whatever in the number of men and horses required or actually used in performing said mail service upon the expedited schedule over and above the number required and used in

performing said service upon the original schedule. And the said false allegations were designed to mislead and did mislead the Postmaster-General.

And the plaintiff further says that by reason of the said false allegations in the statement aforesaid, the plaintiff's officers were induced to pay the moneys aforesaid from time to time, between the first day of July, 1879, and the 31st day of July, 1882, amounting in the aggregate to the sum of $30,690.16, which sum was paid by the plaintiff's officers to the defendant, as above set forth, in mistake of fact, and was received by the said defendant contrary to the provisions of section 3961 of the Revised Statutes of the United States. Said payments are more fully and at length set out in the statement hereto annexed, marked
17 Exhibit D and made a part of this complaint.

Said exhibit also shows the amount which said defendant was lawfully entitled to receive upon the basis of the stock and carriers actually employed.

Wherefore plaintiff demands judgment against defendant for the sum of thirty thousand six hundred and ninety dollars and sixteen cents, with interest thereon from the 31st day of July, 1882, at the rate of six per centum per annum, together with the costs of this suit.

S. G. HILBORN,
United States Attorney.
GEO. L. DOUGLAS,
Of Counsel.

18 *Exhibit A.*

POST-OFFICE DEPARTMENT,
Washington, D. C., Oct. 3rd, 1884.

I certify that the annexed is a true copy taken from the files and records of this Department.

In testimony whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed the day and year above written.

[SEAL.] H. D. LYMAN,
Acting Postmaster-General.

19 *United States of America, Philadelphia Co., Pa.*

* * * * * * * * *

No. 36,115. $6,425 per annum.

This article of contract, made the 15th day of March, eighteen hundred and seventy-eight, between the United States of America (acting in this behalf by the Postmaster-General) and Thos. A. McDevitt, contractor, and James Kee, of Phila., Pa, and William H. Crawford, of Phila., Pa., as his sureties.

Witnesseth, That whereas Thomas A. McDevitt has been accepted, according to law, as contractor for transporting the mail on route No. 36,115, from Helena, Mont., by Hot Springs (Mo.), Blackfoot City, Toll-

gate, Deer Lodge, Yamhill, Pioneer, New Chicago, and Bear's Mouth to Missoula and back six times a week by a schedule satisfactory to the Department, at six thousand four hundred and twenty-five dollars per year, for and during the term beginning July first, eighteen hun-
20 dred and seventy-eight and ending June thirtieth, eighteen hundred and eighty-two; now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America, and do bind themselves —

1st. To carry said mail with certainty, celerity, and security, using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size, weight, or increase during the term of this contract, and within the time fixed in the annexed schedule of departures and arrivals; and so to carry until said schedule is altered by the authority of the Postmaster-General of the United States, as hereinafter provided, and then to carry according to such altered schedule; and in all cases to carry said mail in preference to passengers and freight, and to their entire exclusion if its weight, bulk, or safety shall so require.

And that they will carry the mail upon demand, by any conveyance which said contractor regularly runs, or is concerned in running, on the route beyond number of trips above specified, in the same manner
21 and subject to the same regulations as are herein provided touching regular trips.

2nd. To carry the mail in a safe and secure manner free from wet or other injury, under a sufficient oil-cloth or bear-skin if carried on a horse, and in a boot under the driver's seat if carried in a coach or other vehicle.

3d. To take the mail and every part thereof from and deliver it and every part thereof at each post-office on the route, or that may hereafter be established on the route (or on any route that may hereafter be established and to which this contract may be extended as hereinafter provided), and into the post-office at each end of the route, and into the post-office—if one is there kept—at the place at which the carrier stops for the night, and if no post-office is there kept to lock it up in some secure place, at the risk of the contractor.

They also undertake, covenant, and agree with the United States of America, and do bind themselves, jointly and severally, as aforesaid, to be accountable and answerable in damages for the person to whom said
22 contractor shall commit the care and transportation of the mail, and his careful and faithful performance of the obligations assumed herein and those imposed by law, not to commit the care or transportation of the mail to any person under sixteen years of age; to discharge any carrier of said mail whenever required so to do by the Postmaster-General; not to transmit by themselves, or either of them, or either of their agents, or be concerned in transmitting commercial intelligence more rapidly than by mail; not to carry, otherwise than in the mail, letters, packets, or newspapers which should go by mail, or convey or transport any person engaged in carrying letters, packets, or newspapers which should go by mail; to carry post-office blanks, mail locks and bags, and other postal supplies, and also the special agents of the Department on the exhibition of their credentials, if a coach or other suitable conveyance is used, without additional charge; to collect quarterly, if required by the Postmaster-General,

of postmasters on the route the balances due from them to the United
23 States on their quarterly returns, and faithfully to render an account thereof to the Postmaster-General in the settlement of the quarterly accounts of said contractor, and to pay over to the Auditor of the Treasury for the Post-Office Department on the order of the Postmaster-General all balances remaining in his hands.

For which services, when performed, the said Thos. A. McDevitt, contractor, is to be paid by the United States the sum of six thousand four hundred and twenty-five dollars a year, to wit, quarterly, in the months of November, February, May, and August, through the postmasters on the route, or otherwise, at the option of the Postmaster-General, said pay to be subject, however, to be reduced or discontinued by the Postmaster-General as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster-General may discontinue or extend this contract, change the schedule and termini of the route, and alter, increase,
24 decrease, and extend the service, in accordance with law, he allowing a pro rata increase of compensation for any additional service thereby required or for increased speed, if the employment of additional stock or carriers is rendered necessary. And in case of decrease, curtailment, or discontinuance of service, as a full indemnity to said contractor, one month's extra pay on the amount of service dispensed with and a pro rata compensation for the service retained: Provided, however, that in case of increased expedition the contractor may, upon timely notice, relinquish the contract.

It is hereby also stipulated and agreed by the said contractor and his sureties as aforesaid that they shall forfeit:

1. The pay of a trip when it is not run, and, in addition, if no sufficient excuse for the failure is furnished, an amount not more than three times the pay of the trip.

2. At least one-fourth of the pay of a trip when the running is so far behind time as to fail to make connection with a depending mail.

3. For violating any of the foregoing provisions touching the
25 transmission of commercial intelligence more rapidly than by mail, or giving preference to passengers or freight over the mail or any portion thereof, or for leaving the same for their accommodation, or carrying, otherwise than in the mail, matter which should go by mail, or transporting persons engaged in so doing, with knowledge thereof, a penalty equal to a quarter's pay.

4. For violating any other provision of this contract touching the carriage of the mails or the time and manner thereof, without a satisfactory explanation of the delinquency in due time to the Postmaster-General, a penalty in his discretion. That these forfeitures may be increased into penalties of a higher amount in the discretion of the Postmaster-General, according to the nature or frequency of the failure and the importance of the mail: Provided, that, except as herein otherwise specified, and except as provided by law, no penalty shall exceed three times the pay of a trip in each case.

And it is hereby further stipulated and agreed by the said con-
26 tractor and his sureties that the Postmaster-General may annul the contract for repeated failures; for violating the postal laws; for

disobeying the instructions of the Post-Office Department; for refusing to discharge a carrier when required by the Department; for transmitting commercial intelligence or matter which should go by mail contrary to the stipulations herein; for transporting persons so engaged as aforesaid; whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress, and whenever in the opinion of the Postmaster-General the service can not be safely continued, the revenues collected, or the laws maintained on the road or roads herein.

And it is hereby further stipulated and agreed that such annulment shall not impair the right to claim damages from said contractor and his sureties under this contract; but such damages may, for the purpose of set-off or counterclaim, in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the
27 Treasury for the Post-Office Department.

And it is hereby stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster-General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or other contractors shall be made by the Postermaster-General.

And this contract shall, in all its parts, be subject to the terms and requirements of the act of Congress, approved April twenty-first, one thousand eight hundred and eight, entitled "An act concerning public contracts," and of the act of Congress approved June eighth, one thousand eight hundred and seventy-two, entitled "An act to revise, consolidate, and amend the statutes relating to the Post-Office Department."

In witness whereof the said Postmaster-General has caused the seal of the Post-Office Department to be hereto affixed, and has attested the same by his signature, and the said contractor and his sureties have here-
28 unto set their hands and seals the day and year set opposite their names, respectively.

D. M. KEY,
Postmaster-General.

Signed, sealed, and delivered by the Postmaster-General in the presence of—

J. N. DORRIS,

And by the other parties hereto in the presence of—

JNO. O'BYRNE,
WM. J. AYRES,
Witnesses.

Signed this 17th day of April, 1878.

THOS. A. MCDEVITT, [SEAL.]
Contractor.

Signed this " day of April, 1878.

JAMES KEE, [SEAL.]

Signed this " day of April, 1878.

WILLIAM H. CRAWFORD, [SEAL.]
Sureties.

POST-OFFICE, PHILADELPHIA,
April 17, 1878.

I hereby certify that James Kee, of Philadelphia, and William H. Crawford, of Philadelphia, are good and sufficient sureties for the amount of the foregoing contract.

A. LOUDON SNOWDEN,
Postmaster.

29 The schedule of departures and arrivals.

Summer schedule.

Leave Helena daily, ex. Sun., at 6 a. m.
Arrive at Missoula next days by 6 p. m.
Leave " daily, ex. Sun., at 6 a. m.
Arrive at Helena next days by 6 p. m.

Winter schedule.

Leave Helena daily, ex. Sun., at 7 a. m.
Arrive at Missoula third days by 6 p. m.
Leave " daily, ex. Sun., at 7 a. m.
Arrive at Helena third days by 6 p. m.

Provided, That when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to the time fixed in this schedule.

Certificate of the oath of mail contractors and carriers required by act of Congress of June 8, 1872, as amended by act of March 5, 1874, 18th Stats., p. 19.

(Take this oath after signing the foregoing contract.)

I, Thomas A. McDevitt, being "employed in the care, custody, and conveyance of the mail" as contractor on route No. 36115, from Helena
30 to Missoula, State of , do swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post-offices and post-roads within the United States; and that I will honestly and truly account for and pay over any moneys belonging to the United States which may come into my possession or control.

And I do further solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign or domestic. So help me God.

THOMAS A. MCDEVITT,
Contractor.

COUNTY OF PHILADELPHIA,
State of Pennsylvania, ss:

Sworn before the subscriber, a notary public for the Commonwealth of Pa., for the county and State aforesaid, this 6th day of April, A. D. 1878; and I also certify that the person named is above the age of twenty-one years to the best of my knowledge and belief.

M. O'BYRNE. [SEAL.]
Notary Public.

NOTE.—When the oath is taken before a justice of the peace or any officer not using a seal, except a judge of the United States court, the certificate of the clerk of a court of record must be added under his seal of office, that the person who administered the oath is duly qualified as such officer.

31 *Exhibit "A."*

Form No. 1001.

Certificate.—(F.)

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, R. F. Crowell, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement from the records of this office of the account of Thomas A. McDevitt, contractor for the transportation of the mails on route No. 36115, in Montana Territory, from July 1st, 1878, to June 30th, 1882.

In testimony whereof I have hereunto signed my name and caused to be affixed my seal of office at the city of Washington, District of Columbia, this second day of October, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] R. F. CROWELL,
Auditor.

Statement of account.

DR. *Thomas A. McDevitt, Montana, contractor, in account with the United States.* CR.

Route.			Route.		
36115	To part of warrant favor T. A. McDevitt	1,606.25	36115	By transportation, 3rd qr., 1878	1,606.25
"	" collections, 4th qr., 1878	2,776.23	"	" " 4th " "	1,606.25
"	" " 1st " 1879	1,820.81	"	" " 1st " 1879	4,684.89
"	" deduction, " " "	77.01	"	" " 2nd " "	4,684.89
"	" part of warrant favor T. A. McDevitt	1,617.09	"	" " 3rd " "	4,684.89
"	" collections, 2nd qr., 1879	1,496.00	"	" " 4th " "	4,684.89
"	" part of warrant favor T. A. McDevitt	3,188.89	"	" " 1st " 1880	4,684.89
"	" " " " " M. Salisbury, subcontr	4,684.89	"	" " 2nd " "	4,684.89
"	" deduction, 4th qr., 1879	112.93	"	" " 3rd " "	4,684.89
"	" part of warrant favor M. Salisbury, subcontr	4,571.96	"	" " 4th " "	4,684.89
"	" deduction, 1 qr., 1880	493.90	"	" " 1 " 1881	4,684.89
"	" part of warrant favor M. Salisbury, subcontr	4,190.99	"	" remission of deduction	106.25
"	" deduction, 2nd qr., 1880	693.36			
"	" part of warrant favor M. Salisbury, subcontr	3,991.53			
"	" deduction, 3d qr., 1880	15.40			
"	" part of warrant favor M. Salisbury, subcontr	4,669.49			
"	" deduction, 4th qr., 1880	225.25			
"	" part of warrant favor M. Salisbury, subcontr	4,459.64			
"	" deduction, 1st qr., 1881	1,121.42			
"	" part of warrant favor M. Salisbury, subcontr	3,669.72			
	Forward	45,482.76		Forward	45,482.76

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Route.			Route.		
36115	To am't brought forward	45,482.76	36115	By am't brought forward	45,482.76
"	" warrant favor M. Salisbury, subcontr	556.20	"	" remission of deduction	556.20
"	" part of warrant favor M. Salisbury, subcontr	461.23	"	" " "	461.23
"	" deduction, 2nd qr., 1881	560.25	"	" transportation, 2nd qr., 1881	4,684.89
"	" part of warrant favor M. Salisbury, subcontr	4,124.64	"	" " 3rd " "	4,684.89
"	" deduction, 3rd qr., 1881	35.93	"	" " 4th " "	4,684.89
"	" part of warrant favor M. Salisbury, subcontr	4,648.96	"	" " 1st " 1882	4,684.89
"	" deduction 4th qr., 1881	943.25	"	" " 2nd " "	4,684.89
"	" part of warrant favor M. Salisbury, subcontr	3,741.64			
"	" deduction, 1st qr., 1882	88.55			
"	" part of warrant favor M. Salisbury, subcontr	4,596.34			
"	" deduction, 2nd qr., 1882	43.63			
"	" part of warrant favor M. Salisbury, subcontr	4,641.26			
	Warrant 3985, New York, dated July 31, 1882	69,924.64			69,924.64

OFFICE OF THE AUDITOR OF THE TREASURY,
FOR THE POST-OFFICE DEPARTMENT,
Washington, D. C., October 1st, 1884.
R. F. CROWELL, *Auditor.*

34 *Exhibit B.*

POST-OFFICE DEPARTMENT,
Washington, D. C., October 6, 1884.

I certify that the annexed is a true copy taken from the files and records of this Department.

In testimony whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed the day and year above written.

[SEAL.] FRANK HATTON,
Acting Postmaster-General.

35 This article of contract, made this first day of October, A. D. 1878, between Thomas A. McDevitt, of the city of Philadelphia and State of Pennsylvania, contractor with the United States Post-Office Department for transporting the United States mail on route No. 36115, between Helena and Missoula, Montana Territory, on the one part, and Monroe Salisbury, of Salt Lake City, Utah Territory, party of the other part,

Witnesseth that whereas the said Monroe Salisbury has been accepted as subcontractor for transporting the United States mail on said route No. 36115, from the first day of October, A. D. 1878, to the thirtieth day of June, A. D. 1882, now, therefore, the said Monroe Salisbury doth undertake, covenant, and agree with the said Thomas A. McDevitt and by these presents hath undertaken, covenanted, and agreed to transport the United States mails on the above numbered and named route, and for the period above mentioned, and that the said Salisbury will perform said service in strict accordance with the terms of his (McDevitt's) contract with
36 the Post-Office Department as well as in accordance with the postal laws of the United States, the regulations of the Post-Office Department, and the orders of the Postmaster-General; and further that the said Monroe Salisbury will hold himself responsible in damages to the said Thomas A. McDevitt for any and all fines, penalties, and pecuniary losses that may result from any failure to comply with the terms of his (McDevitt's) contract with the Post-Office Department, or from any violation of said laws, regulations, and orders.

In consideration of the above recited undertakings, covenants, and agreements of the said Monroe Salisbury, and to enable him, the said Monroe Salisbury, to execute the same, the said Thomas A. McDevitt doth hereby give, assign, and set over to the said Monroe Salisbury the entire amount of pay that may become due him, the said Thomas A. McDevitt, as contractor on said route No. 36115, for the period commencing the first day of October, A. D. 1878, and terminating June thirtieth, A. D. 1882.

37 This contract to be binding on the heirs and legal representatives of the parties thereto.

Witness our hands and seals this first day of Oct., A. D. 1878.

(Signed) THOMAS A. MCDEVITT. [SEAL.]
(Signed) MONROE SALISBURY. [SEAL.]

Witnesses:
(Signed) JOS. C. MCKIBBON.
(Signed) HUGH WHITE.

38 J. H. C. *Exhibit C.* 36115

POST-OFFICE DEPARTMENT,
Washington, D. C., August 1st, 1883.

I, A. D. Hazen, Acting Postmaster-General of the United States of America, certify that the annexed is a true copy of the original affidavit on file in this Department.

In testimony whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed, at the city of Washington, the day and year above written.

[SEAL.]

A. D. HAZEN,
Acting Postmaster-General.

39 To perform service six times a week on route No. 36115, from Helena to Missoula, Montana Ty., on a schedule of 36 hours in summer and 59 hours in winter, will require 6 men and 24 head of horses; to perform the same service on a reduced schedule of 30 hours in summer and 45 hours in winter will require 15 men and 60 head of horses.

(Signed) THOS. A. MCDEVITT,
Contractor.

Thos. McDevitt, being duly sworn according to law, deposes and says that the facts as set forth above are true to the best of knowledge and belief.

Sworn and subscribed before me this 18 day of Dec., A. D. 1878.

(Signed) M. A. BYRNE,
Notary Public.

40 G. F. S., Oct. 6, 1884. *Exhibit D.* (Exhibit B.)

Route No. 36115, Helena to Missoula, Montana. Contract term, July 1, 1878, to June 30, 1882. Contractor, Thomas A. McDevitt; sub-cont'r, M. Salisbury. (Fin. July 1, 1879.)

Cost of service was as follows:

From July 1, 1878, to Dec. 31, 1878, @ $6,425 per annum		$3,212.50
" Jan. 1, 1879, " June 30, 1882, @ $18,739.58 per annum		65,588.53
Total allowance for service		68,801.03
The Auditor settling by quarters made this amount less by		.07
		$68,800.96

Deductions were as follows:

Quarter ended Mar. 31, 1879	$77.01	
" " Dec. 31, 1879	112.93	
" " Mar. 31, 1880	493.90	
" " June 30, 1880	693.36	
" " Sep. 30, 1880	15.40	
" " Dec. 31, 1880	225.25	
" " Mar. 31, 1881	1,121.42	
" " June 30, 1881	560.25	
" " Sep. 30, 1881	35.93	
" " Dec. 31, 1881	943.25	
" " Mar. 31, 1882	88.55	
" " June 30, 1882	43.63	
Total deduction		$4,410.88

41 Total deduction bro't for'd $4,410.88

Remissions were as follows:

Quarter ended Dec. 31, 1880	$106.25	
" " Mar. 31, 1881	556.20	
" " June 30, 1881	461.23	
Total remission		$1,123.68
Total deduction not remitted		$3,287.20

RECAPITULATION.

Total allowances for service	$68,800.96
Total deduction not remitted	3,287.20
Amount actually paid for service	65,513.76

42 Pay on the basis of stock and carriers actually employed would have been as follows:

From July 1, 1878, to Dec. 31, 1878, @ $6,425.00 p. a	$3,212.50
" Jan'y 1, 1879, " June 30, 1882, " 7,495.83 "	26,235.40
Total allowance for service on new basis	29,447.90

Deductions on new basis would have been:

Quarter ended Mar. 31, 1879	$30.81	
" " Dec. 31, 1879	10.27	
" " Mar. 31, 1880	20.54	
" " Dec. 31, 1880	56.48	
" " Mar. 31, 1881	118.10	
Total deductions on new basis		236.20

Remissions on new basis:

Quarter ended Dec. 31, 1880	10.27	
" " Mar. 31, 1881	43.87	
Total remission on new basis		54.14
Total deduction, less remission on new basis		182.06

Recapitulation on new basis:

Total allowance for service (new basis)	29,447.90
Total deduction, less remissions (")	182.06
Amount which should have paid for service	29,265.84

FINAL RECAPITULATION.

Amount actually paid for service	$65,513.76
Amount which should have been paid	29,265.84
Amount to be recouped	36,247.92

43 Route No. 36115 (1878–1882). Helena to Missoula, Montana.
Service expedited from January 1, 1879.
Subcontract filed to take effect July 1, 1879.
Therefore, from Jan'y 1, 1879, to June 30, 1879:

Amount allowed for service	$9,369.70
" of deductions	77.01
" actually paid	9,292.78
Allowance on revised basis	3,747.91
Deduction " " "	30.81
Amount which should have been paid	3,717.10
Amount to be recouped	5,575.68

This amount to be recouped on the period Jan'y 1, 1879, to June 30, 1879, is not chargeable to the subcontractor.

(Endorsed:) Filed February 28, 1885. L. S. B. Sawyer, clerk.

44 *Summons.*

United States of America. Circuit court of the United States, ninth circuit, district of California.

THE UNITED STATES OF AMERICA, plaintiff, *vs.* MONROE SALISBURY, DEFENDANT. | Action brought in the said circuit court, and the complaint filed in the office of the clerk of said circuit court, in the city and county of San Francisco.

The President of the United States of America, greeting, to Monroe Salisbury:

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the circuit court of the United States, ninth circuit, in and for the district of California, and to file your plea, answer, or demurrer, to the complaint filed therein (a certified copy of which accompanies this summons), in the office of the clerk of said court, in the city and county of San Francisco, within ten days after the service on you of this summons—if served in this county; or if served out of this county, then within thirty days—or judgment by default will be taken against you.

The said action is brought to recover from you the sum of thirty thousand six hundred and ninety $\frac{16}{100}$ dollars, money alleged to have been had and received by you and paid by said plaintiff to you by reason of certain false and fraudulent representations made to the Post-Office Department of the United States, &c., together with interest thereon from the 31st July, 1882, at the rate of six per centum per annum and the costs of this action. All of which is more fully set out in the complaint on file herein, to which reference is hereby made, and if you fail to appear and plead, answer, or demur, as herein required, your default will be entered and the plaintiff will apply to the court for the relief demanded in the complaint herein.

Witness, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 28th day of February, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the 109th.

[SEAL.] L. S. B. SAWYER, *Clerk.*

45 UNITED STATES MARSHAL'S OFFICE, DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 13 day of March, 1885, and personally served the same on the 1st day of April, 1885, by delivering to and leaving with Monroe Salisbury, said defendant named

therein, personally, at the city and county of San Francisco, in said district, a certified copy thereof, together with a copy of the complaint, certified to by L. S. B. Sawyer, clerk U. S. circuit court, attached thereto.

M. M. DREW,
U. S. Marshal.
By W. L. MCEWEN,
Deputy.

SAN FRANCISCO, *April 1st*, 1885.

(Endorsed:) No. 3626. U. S. circuit court, ninth circuit, district of California. The United States of America vs. Monroe Salisbury. Summons. S. G. Hilborn, plaintiff's attorney. Filed April 1, 1885, L. S. B. Sawyer, clerk. By F. D. Moncton, deputy clerk.

46 *Demurrer.*

In the United States circuit court, ninth circuit, district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
MONROE SALISBURY, DEFENDANT. } No. 3626.

Now comes the defendant, Monroe Salisbury, and demurs to the complaint of plaintiff, filed herein, and specifies as grounds of demurrer:

1st. That the complaint does not state facts sufficient to constitute a cause of action against this defendant.

That the first cause of action therein attempted to be set out does not state facts sufficient to constitute a cause of action against this defendant.

47 That the second cause of action therein attempted to be set out does not state facts sufficient to constitute a cause of action against this defendant.

That the third cause of action therein attempted to be set out does not state facts sufficient to constitute a cause of action against this defendant.

2d. That there is a defect of parties defendant in the first cause of action in said complaint attempted to be set out, in this: that if any cause of action exists against this defendant, Thomas A. McDevitt, who is alleged in said complaint to have entered into a certain contract with the plaintiff herein, on the 15th day of March, 1878, should be found with this defendant as a party defendant herein.

That there is a defect of parties defendant in the third cause of action in said complaint attempted to be set out, in this: that if any cause of action exists against this defendant, one Thomas A. McDevitt,

48 who is alleged in said complaint to have been the contractor upon the certain mail route set out and designated in said complaint, should be joined with this defendant as a party defendant herein.

3d. That the first cause of action attempted to be set out in said complaint is ambiguous, unintelligible and uncertain, in this:

(A) That it does not appear from said complaint what false and fraudulent vouchers, if any, were presented to the Post-Office Department, nor does it appear therefrom in anyway, how, or in what manner, or by whom, such false and fraudulent vouchers were made, if made at all, or were presented to said Post-Office Department, if presented at all.

(B) That it does not appear from said complaint, or at all, how,
49 or in what manner the sum of $30,690.16, alleged to have been received by the defendant, was in excess of the amount which the defendant was entitled to receive for mail service performed between the first day of July, 1879, and the 1st day of July, 1882; nor does it appear from said complaint or at all, what amount the defendant was entitled to receive for such mail service; nor does it appear in said complaint in any manner, or at all, what amount the defendant did receive, if anything, for such mail service.

Wherefore, the said defendant prays judgment to be dismissed hence without day, and for his costs.

E. B. YOUNG,
Attorney for Defendant.

50 I hereby certify that, in my opinion, this demurrer is well founded in points of law.

E. B. YOUNG,
Attorney for Defendant.

(Endorsed:) Due service of the within demurrer, and receipt of a copy thereof, admitted this 10th day of July, A. D. 1885. S. G. Hilborn, attorney for plaintiff. Filed July 10, 1885. L. S. B. Sawyer, clerk.

51 *Order sustaining demurrer, &c.*

At a stated term, to wit, the July term, A. D. 1890, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court room in the city and county of San Francisco, on Monday, the 15th day of September, in the year of our Lord one thousand eight hundred and ninety.

Present: The honorable Lorenzo Sawyer, circuit judge.

THE UNITED STATES OF AMERICA
vs.
MONROE SALISBURY. } No. 3626.

The demurrer to the complaint herein, heretofore argued and submitted to the court for consideration and decision, having been duly considered, it is ordered that said demurrer be and the same hereby is sus-
52 tained, the complaint dismissed, and judgment entered herein accordingly.

53 *Judgment.*

In the circuit court of the United States, ninth judicial circuit, northern district of California.

THE UNITED STATES OF AMERICA
vs.
MONROE SALISBURY. } No. 3626.

The court having sustained the demurrer of defendant to the complaint of plaintiff, and ordered that said plaintiff's complaint herein be dismissed.

Now, therefore, by virtue of the law, and by reason of the premises aforesaid, it is considered by the court that the plaintiff take nothing by this action, and that the defendant go hereof without day.

Judgment entered September 15, 1890.

L. S. B. SAWYER, *Clerk.*

54 I hereby certify that the foregoing is a full, true, and correct copy of an original judgment entered in the above-entitled cause.

Attest my hand and the seal of said circuit court, this 15th day of September, A. D. 1890.

[SEAL.] L. S. B. SAWYER, *Clerk.*

(Endorsed:) Filed September 15, 1890. L. B. S. Sawyer, clerk.

55 *Clerk's certificate.*

In the circuit court of the United States, ninth judicial circuit, in and for the northern district of California.

UNITED STATES *vs.* M. SALISBURY. } No. 3626.

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the ninth judicial circuit, northern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the above entitled action.

Attest my hand and the seal of said circuit court this 15th day of Sept., 1890.

[SEAL.] L. S. B. SAWYER, *Clerk.*

By F. D. MONCKTON, *Deputy Clerk.*

(Endorsed:) Judgment roll. Filed Sept. 15, 1890. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

56 In the circuit court of the United States of America of the ninth judicial circuit, in and for the northern district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* MONROE SALISBURY, DEFENDANT. } No. 3626.

I, L. S. B. Sawyer, clerk of the circuit court of the United States of America of the ninth judicial circuit, in and for the northern district of California, do hereby certify that the foregoing fifty-five written and printed pages, numbered from 1 to 55, inclusive, are a full, true, and correct copy of the record and of the proceedings in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

57 Witness my hand and the seal of said circuit court this 22d day of April, A. D. 1891.

[SEAL.] L. S. B. SAWYER, *Clerk.*

58 UNITED STATES OF AMERICA, ss.

The President of the United States of America to the judges of circuit court of the United States of the ninth judicial circuit, in and for the northern district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you between the United States of America, plaintiffs and plaintiffs in error, and Monroe Salisbury, defendant and defendant in error, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the fourteenth day of May next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 16th day of March, in the year of our Lord one thousand eight hundred and ninety one, and of the independence of the United States the one hundred and fifteenth.

[SEAL.] L. S. B. SAWYER,
Clerk of the Circuit Court of the United States for the Northern District of California.

The above writ of error is hereby allowed.

LORENZO SAWYER,
Circuit Judge, Ninth Judicial Circuit.

59 The answer of the judges of the circuit court of the United States for the northern district of California.

The record and all proceedings of the plaint, whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

By the court:

[SEAL.] L. S. B. SAWYER,
Clerk.

(Indorsed:) No. 3626. United States Supreme Court. The United States of America, plaintiff and plaintiff in error, vs. Monroe Salisbury, defendant and defendant in error. Writ of error. Filed April 15, 1891. L. S. B. Sawyer, clerk.

60 United States of America, ss. To Monroe Salisbury, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 14th day of May, A. D. 1891, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States of America of the ninth judicial circuit, in and for the northern district of California, wherein the United States of America are plaintiffs and plaintiffs in error and you are defendant and defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Lorenzo Sawyer, judge of the circuit court of the United States of the ninth judicial circuit, this 16th day of March, A. D. 1891, and of the independence of the United States the one hundred and fifteenth.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

61 (Indorsed:) No. 3626. In the Supreme Court of the United States. The United States of America, plaintiffs and plaintiffs in error vs. Monroe Salisbury, defendant and defendant in error. Citation. Service of a copy of the within citation is hereby admitted this 15th day of April, 1891. E. B. Young, att'y for defendant and defendant in error. Filed April 15, 1891. L. S. B. Sawyer, clerk.

62 Indorsement on cover: Supreme Court U. S., clerk's office. Received May 16, 1891. No. 167. 14644. The United States, plaintiff in error, vs. Monroe Salisbury. N. California, C. C. U. S. Filed May 16, 1891.